

Introduced by Senator TorlaksonFebruary 19, 2004

An act to amend Section 33334.2 of the Health and Safety Code, relating to redevelopment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1428, as introduced, Torlakson. Redevelopment.

The existing Community Redevelopment Law requires certain affordable housing units developed within the city limits of Walnut Creek to remain affordable for at least 55 years.

This bill would require those units to remain affordable in perpetuity.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 33334.2 of the Health and Safety Code
2 is amended to read:
3 33334.2. (a) Not less than 20 percent of all taxes that are
4 allocated to the agency pursuant to Section 33670 shall be used by
5 the agency for the purposes of increasing, improving, and
6 preserving the community's supply of low- and moderate-income
7 housing available at affordable housing cost, as defined by Section
8 50052.5, to persons and families of low or moderate income, as
9 defined in Section 50093, lower income households, as defined by
10 Section 50079.5, very low income households, as defined in
11 Section 50105, and extremely low income households, as defined
12 by Section 50106, that is occupied by these persons and families,



1 unless one of the following findings is made annually by
2 resolution:

3 (1) (A) That no need exists in the community to improve,
4 increase, or preserve the supply of low- and moderate-income
5 housing, including housing for very low income households in a
6 manner that would benefit the project area and that this finding is
7 consistent with the housing element of the community's general
8 plan required by Article 10.6 (commencing with Section 65580)
9 of Chapter 3 of Division 1 of Title 7 of the Government Code,
10 including its share of the regional housing needs of very low
11 income households and persons and families of low or moderate
12 income.

13 (B) This finding shall only be made if the housing element of
14 the community's general plan demonstrates that the community
15 does not have a need to improve, increase, or preserve the supply
16 of low- and moderate-income housing available at affordable
17 housing cost to persons and families of low or moderate income
18 and to very low income households. This finding shall only be
19 made if it is consistent with the planning agency's annual report to
20 the legislative body on implementation of the housing element
21 required by subdivision (b) of Section 65400 of the Government
22 Code. No agency of a charter city shall make this finding unless
23 the planning agency submits the report pursuant to subdivision (b)
24 of Section 65400 of the Government Code. This finding shall not
25 take effect until the agency has complied with subdivision (b) of
26 this section.

27 (2) (A) That some stated percentage less than 20 percent of the
28 taxes that are allocated to the agency pursuant to Section 33670 is
29 sufficient to meet the housing needs of the community, including
30 its share of the regional housing needs of persons and families of
31 low- or moderate-income and very low income households, and
32 that this finding is consistent with the housing element of the
33 community's general plan required by Article 10.6 (commencing
34 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
35 Government Code.

36 (B) This finding shall only be made if the housing element of
37 the community's general plan demonstrates that a percentage of
38 less than 20 percent will be sufficient to meet the community's
39 need to improve, increase, or preserve the supply of low- and
40 moderate-income housing available at affordable housing cost to



persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

(C) For purposes of making the findings specified in this paragraph and paragraph (1), the housing element of the general plan of a city, county, or city and county shall be current, and shall have been determined by the department pursuant to Section 65585 to be in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to, and occupied by, persons and families of low or moderate income and very low income households is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need that can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment



1 plan. No finding under this subdivision may be made until the
2 community has provided or ensured the availability of
3 replacement dwelling units as defined in Section 33411.2 and until
4 it has complied with Article 9 (commencing with Section 33410).

5 (B) In making the determination that other financial
6 contributions are equivalent in impact pursuant to this subdivision,
7 the agency shall include only those financial contributions that are
8 directly related to programs or activities authorized under
9 subdivision (e).

10 (C) The authority for making the finding specified in this
11 paragraph shall expire on June 30, 1993, except that the expiration
12 shall not be deemed to impair contractual obligations to
13 bondholders or private entities incurred prior to May 1, 1991, and
14 made in reliance on the provisions of this paragraph. Agencies that
15 make this finding after June 30, 1993, shall show evidence that the
16 agency entered into the specific contractual obligation with the
17 specific intention of making a finding under this paragraph in
18 order to provide sufficient revenues to pay off the indebtedness.

19 (b) Within 10 days following the making of a finding under
20 either paragraph (1) or (2) of subdivision (a), the agency shall send
21 the Department of Housing and Community Development a copy
22 of the finding, including the factual information supporting the
23 finding and other factual information in the housing element that
24 demonstrates that either (1) the community does not need to
25 increase, improve, or preserve the supply of housing for low- and
26 moderate-income households, including very low income
27 households, or (2) a percentage less than 20 percent will be
28 sufficient to meet the community's need to improve, increase, and
29 preserve the supply of housing for low- and moderate-income
30 households, including very low income households. Within 10
31 days following the making of a finding under paragraph (3) of
32 subdivision (a), the agency shall send the Department of Housing
33 and Community Development a copy of the finding, including the
34 factual information supporting the finding that the community is
35 making a substantial effort to meet its existing and projected
36 housing needs. Agencies that make this finding after June 30,
37 1993, shall also submit evidence to the department of its
38 contractual obligations with bondholders or private entities
39 incurred prior to May 1, 1991, and made in reliance on this finding.



(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low- and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional housing need pursuant to the report required by subdivision (b) of Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purposes of this section, the agency may exercise any or all of its powers for the construction, rehabilitation, or preservation of affordable housing for extremely low, very low, low-, and moderate-income persons or families, including the following:

(1) Acquire real property or building sites subject to Section 33334.16.

(2) Improve real property or building sites with onsite or offsite improvements, but only if both (A) the improvements are part of the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements, and are a reasonable and fundamental component of the housing units, and (B) the agency requires that the units remain available at affordable housing cost to, and occupied by, persons and families of extremely low, very low, low, or moderate income for the same time period and in the same manner as provided in subdivision (c) and paragraph (2) of subdivision (f) of Section 33334.3.

If the newly constructed or rehabilitated housing units are part of a larger project and the agency improves or pays for onsite or offsite improvements pursuant to the authority in this subdivision,

1 the agency shall pay only a portion of the total cost of the onsite
2 or offsite improvement. The maximum percentage of the total cost
3 of the improvement paid for by the agency shall be determined by
4 dividing the number of housing units that are affordable to low- or
5 moderate-income persons by the total number of housing units, if
6 the project is a housing project, or by dividing the cost of the
7 affordable housing units by the total cost of the project, if the
8 project is not a housing project.

9 (3) Donate real property to private or public persons or entities.

10 (4) Finance insurance premiums pursuant to Section 33136.

11 (5) Construct buildings or structures.

12 (6) Acquire buildings or structures.

13 (7) Rehabilitate buildings or structures.

14 (8) Provide subsidies to, or for the benefit of, extremely low
15 income households, as defined by Section 50106, very low income
16 households, as defined by Section 50105, lower income
17 households, as defined by Section 50079.5, or persons and
18 families of low or moderate income, as defined by Section 50093,
19 to the extent those households cannot obtain housing at affordable
20 costs on the open market. Housing units available on the open
21 market are those units developed without direct government
22 subsidies.

23 (9) Develop plans, pay principal and interest on bonds, loans,
24 advances, or other indebtedness, or pay financing or carrying
25 charges.

26 (10) Maintain the community's supply of mobilehomes.

27 (11) Preserve the availability to lower income households of
28 affordable housing units in housing developments that are assisted
29 or subsidized by public entities and that are threatened with
30 imminent conversion to market rates.

31 (f) The agency may use these funds to meet, in whole or in part,
32 the replacement housing provisions in Section 33413. However,
33 nothing in this section shall be construed as limiting in any way the
34 requirements of that section.

35 (g) (1) The agency may use these funds inside or outside the
36 project area. The agency may only use these funds outside the
37 project area upon a resolution of the agency and the legislative
38 body that the use will be of benefit to the project. The
39 determination by the agency and the legislative body shall be final
40 and conclusive as to the issue of benefit to the project area. The

Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project area. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:

(i) Both the County of Contra Costa and the City of Walnut Creek have adopted and are implementing complete and current housing elements of their general plans that the Department of Housing and Community Development has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.

(iii) The development to be funded shall not be constructed in an area that currently has more than 50 percent of its population comprised of racial minorities or low-income families.

(iv) The development to be funded shall allow construction of affordable housing closer to a rapid transit station than could be constructed in the unincorporated territory outside the Pleasant Hill BART Station Area Redevelopment Project.

(B) If the agency uses these funds within the incorporated limits of the City of Walnut Creek, all of the following requirements shall apply:

(i) The funds shall be used only for the acquisition of land for, and the design and construction of, the development of housing

1 containing units affordable to, and occupied by, low- and
2 moderate-income persons.

3 (ii) If less than all the units in the development are affordable
4 to, and occupied by, low- or moderate-income persons, any agency
5 assistance shall not exceed the amount needed to make the housing
6 affordable to, and occupied by, low- or moderate-income persons.

7 (iii) The units in the development that are affordable to, and
8 occupied by, low- or moderate-income persons shall remain
9 affordable ~~for a period of at least 55 years~~ *in perpetuity*.

10 (iv) The agency and the City of Walnut Creek shall determine,
11 if applicable, whether Article XXXIV of the California
12 Constitution permits the development.

13 (h) The Legislature finds and declares that expenditures or
14 obligations incurred by the agency pursuant to this section shall
15 constitute an indebtedness of the project.

16 (i) The requirements of this section shall only apply to taxes
17 allocated to a redevelopment agency for which a final
18 redevelopment plan is adopted on or after January 1, 1977, or for
19 any area that is added to a project by an amendment to a
20 redevelopment plan, which amendment is adopted on or after the
21 effective date of this section. An agency may, by resolution, elect
22 to make all or part of the requirements of this section applicable
23 to any redevelopment project for which a redevelopment plan was
24 adopted prior to January 1, 1977, subject to any indebtedness
25 incurred prior to the election.

26 (j) This section shall become operative on January 1, 2005.

